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Utah State Legislature

Senate • Utah State Capitol Complex • 320 State Capitol PO BOX 145115 • Salt Lake City, Utah 84114-5115 (801) 538-1035 • fax (801) 538-1414

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May 23, 2017

Office of the Attorney General Utah State Capitol Complex 350 North State Street, Suite 230 Salt Lake City, UT 84114-2320

Dear Attorney General Reyes:

We are writing on behalf of both houses of the Utah State Legislature to request your opinion on questions of law relating to the authority of the Legislature, the Governor and Lieutenant Governor in the specific context of filling a vacancy for a House seat in Congress when a Representative has announced his intention to give up his seat at a future date but remains seated until a future date. This request is made pursuant to Utah Code 67-5-1(7).

As you know, Representative Jason Chaffetz has indicated an intent to resign from Congress, effective June 30, 2017. We request your opinion on the questions below relating to the process to fill the vacancy that could occur if Representative Chaffetz's resignation becomes effective.

These questions are asked against the backdrop of two provisions of the United States Constitution. The first is in Article I, Section 4, and states that "The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof" The second provision is in Article I, Section 2, and states that "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill the Vacancies."

With that background, we request your opinion with respect to the following questions:

- 1. When does the vacancy occur for Representative Chaffetz's position as a member of the United States House of Representatives? Does it occur at the time he announced his intention to resign, or at the time he no longer serves Utah in Congress?
- 2. What is the scope of the Governor's authority under the provision of the U.S. Constitution requiring him to issue a writ of election to fill a midterm vacancy in the office of Representative in the United States House of Representatives?

- Is the Governor's authority limited to calling an election and stating the date
- If not, what additional authority does the Governor have, what is the source of that authority, and how does it differ from the Legislature's authority to prescribe the "Times, Places and Manner of holding Elections for . . . Representatives"?
- 3. Who has the authority to establish the process relating to the election of an individual to fill a midterm vacancy in the office of Representative in the United States House of Representatives? Is it the Legislature, the Governor, or the Lieutenant Governor?
- Does the Legislature's authority to prescribe "[t]he Times, Places and Manner of holding Elections for . . . Representatives" include the authority to establish a process for qualifying candidates for the ballot for an election at which an individual is to be elected to fill a midterm vacancy in the office of Representative in the United States House of Representatives?
- Does either the Governor or Lieutenant Governor share that authority or have independent authority to establish that process?
- If so, what is the source and scope of that authority for the Governor or Lieutenant Governor?
- Can the process set by the Legislature, Governor and/or Lieutenant
 Governor require candidates to declare their candidacy before the Governor issues a writ of election?
- 4. Under Title 20A, Elections, of the Utah Code, the Legislature has established a process for electing an individual to the office of Representative in the United States House of Representatives. That process includes time frames for and sequencing of events; a process for parties to nominate candidates; and a primary election.
- Does either the Governor or Lieutenant Governor have the authority to establish their own process for electing an individual to fill a midterm vacancy in the office of

Representative in the United States House of Representatives, regardless of whether that process is similar to the process established by the Legislature?

• If so, what is the source and scope of either the Governor or Lieutenant Governor's authority?

As you can appreciate, there is some urgency to receiving answers to these questions. We accordingly request your opinion on these questions no later than May 26, 2017.

Respectfully,

Gregory Hughes

Speaker of the House

Wayne L. Niederhauser

Senate President